

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

MICHAEL RANKINS,

Plaintiff,

v.

CIVIL ACTION NO. 5:21-cv-00500

D. L. YOUNG,

Defendant.

ORDER

Pending is Plaintiff Michael Rankins’s Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 [Doc. 1], construed by the Court as a Complaint filed pursuant to *Bivens v. Six Unknown Federal Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) [Docs. 3, 4]. On November 12, 2021, Plaintiff moved for dismissal of the matter pursuant to Rule 41(b) of the *Federal Rules of Civil Procedure*. [Doc. 7]. The matter was previously referred to the Honorable Omar J. Aboulhosn, Magistrate Judge for the Southern District of West Virginia. Judge Aboulhosn filed his Proposed Findings and Recommendations (“PF&R”) on November 15, 2021. Judge Aboulhosn recommended the Court construe Plaintiff’s motion as filed pursuant to Rule 41(a) of the *Federal Rules of Civil Procedure*, grant Plaintiff’s motion to dismiss, dismiss the Petition and Complaint without prejudice, and remove the matter from the Court’s docket. [Doc. 8].

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*”) (emphasis


added). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal the Court's order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (parties may not typically "appeal a magistrate judge's findings that were not objected to below, as § 636(b) doesn't require de novo review absent objection."); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on December 2, 2021. No objections were filed.

Accordingly, the Court **ADOPTS** the PF&R [**Doc. 8**], construes Mr. Rankins's Motion to Dismiss as one brought pursuant to Rule 41(a) of the *Federal Rules of Civil Procedure* and **GRANTS** the same [**Doc. 7**], **DISMISSES** the Petition and Complaint [**Docs. 1, 4**] without prejudice, and removes this matter from the docket.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: January 25, 2022




Frank W. Volk
United States District Judge